

USING THE CHILD SUPPORT GUIDELINES TO YOUR ADVANTAGE

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INTRODUCTION

Most family law practitioners are very knowledgeable about calculating child support, but there are pitfalls that are not always obvious. While the Worksheets quickly answer the calculation question, they do not tell you whether that is the best calculation for the client.

Normally, the attorney plugs in numbers and calculates the child support figure very quickly. While this is the beauty of the child support software, the answer is not always that easy. The figures that are placed in the various categories of the Guidelines are more fungible than they seem at first glance.

HOT TIP: analyze the numbers and your clients situation before you agree upon a certain calculation to ensure your client receives or pays the correct amount according to the facts of the case.

The basic calculation is fairly simple. The complicated portion is the analysis. The client does not care about the actual amount of child support as much as the client cares about the bottom line (i.e. spendable cash). Without the help of Certified Public Accounts, it is easy to miss the highest number. To provide the best and most accurate calculation, you must look at the big picture and ask your client the right questions:

1. Does your client have expenses that may allow him to deviate from the Guidelines? *If so, then make sure you argue to the judge to deviate from the Guidelines in your favor.*

Deviations from the guidelines should be the exception rather than the rule. When the court deviates, it must make written findings that clearly state the nature and extent of the variation from the guidelines. These Child Support Guidelines do not take into account the economic impact of the following factors that can be reasons for deviation:

- (1) Educational expenses for the child(ren) or the spouse (i.e., those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or related costs);*
- (2) Equitable distribution of property;*
- (3) Consumer debts;*
- (4) Families with more than six children;*
- (5) Unreimbursed extraordinary medical/dental expenses for the noncustodial or custodial parent;*
- (6) Mandatory deduction of retirement pensions and union fees;*
- (7) Child-related unreimbursed extraordinary medical expenses;*
- (8) Monthly fixed payments imposed by court or operation of law;*
- (9) Significant available income of the child(ren);*
- (10) Substantial disparity of income in which the noncustodial parent's income is significantly less than the custodial parent's income, thus making it financially impracticable to pay the amount the guidelines indicate the noncustodial parent should pay;*
- (11) Alimony. Because of their unique nature, lump sum, rehabilitative and reimbursement alimony may be considered by the court as a possible reason for deviation from these guidelines.*
- (12) Agreements Reached Between Parties. The court may deviate from the guidelines based on an agreement between the parties if both parties are represented by counsel or if, upon a thorough examination of any party not represented by counsel, the court determines the party fully understands the agreement as to child support. The court still has the discretion and the independent duty to determine if the amount is reasonable and in the best interest of the child(ren). Use of the Guidelines, 1999 Regulations, II B.*

2. Does your client want to impute income to their spouse? *Believe it or not, imputing income could benefit the recipient spouse and financially hurt the payor spouse. See Example B Basic Worksheet.*

3. Does your client want alimony and how much? *The payment and amount of alimony have a direct impact on child support. Every time alimony is changed, the amount of child support changes. Considerations also need to be made for situations with short term alimony. If you base alimony and child support on the recipient's needs, the recipient may want less alimony and more child support if, for example, the children are young, and child support will be paid for years beyond the payment of alimony.*

4. Does your client want to have more than 109 overnights with the children? *If yes, remember that the Shared Parenting Worksheet does not automatically apply. The Worksheet is advisory and not compulsory. To strengthen the argument to pay under the Shared Parenting Worksheet, the parent with fewer nights should consider paying more of the children's expenses over and above the child support. Then, under the terms of this worksheet, the payor will pay less child support than under the Basic Worksheet.*

5. Is the Shared Parenting Worksheet Calculation ever higher than the Basic Calculation? *Yes. There are those rare circumstances in which the shared calculation increases the amount of child support. See Example A under the Shared Parenting Worksheet.*

North Carolina's Guidelines lay out its legislature's reasoning more clearly than our Guidelines. Their language states their Shared Parenting Worksheet calculation should be used only if both parents have custody of the children for at least one-third of the year and the situation involves a true sharing of expenses, rather than extended visitation with one parent that exceeds 122 overnights, [the period of time that they consider]. (emphasis added). In addition, North Carolina's Guidelines state that to the extent that one parent assumes a disproportionate share of costs (for example, one parent buys all the child's clothes), the [Shared Parenting] worksheet should not be used or should be modified accordingly. (emphasis added).

6. How many children does the client have? And, does the client expect to receive child care credit for all three children? *The Guidelines formula gives them credit for two (2) or more children, but federal law only gives credit for two children no matter if there are six children who would otherwise qualify for this child care credit. The old Guidelines used federal law as a basis for the calculation of this credit. The new formula is much simpler, but it does not reflect the actual federal tax credit. If you do not look out for this flaw in the Worksheet calculation, your recipient client may receive less child support that she is entitled to.*

7. Does your client want to provide health insurance for the children through his/her benefits plan? *What if the custodial parent's health insurance is cheaper and more comprehensive? In that case, it may be better for the custodial parent to pay this cost and have it considered in the calculation. What if it does not cost the payor parent any more money for a family plan than a single user? If that is the case, the parent responsible for providing the health insurance should not get a credit in the calculation for payment.*

8. How old are the client's children? *Is it better to get higher alimony or higher child support? The answer may depend on the age of the children and the number of years the custodial parent would receive child support.*

These are some of the many, many questions that affect the child support calculation, and to illustrate some of the points above, twelve (12) scenarios are listed below which various figures put into the calculations. Six (6) calculations use the Basic Child Support Worksheet and six (6) use the Shared Parenting Worksheet. These examples indicate why the practitioner should run several calculations before deciding upon a particular amount of child support.

To simplify the analysis, each example uses these basic facts:

Dad earns \$5000 gross monthly income

Two kids

Mom has custody

Standard deduction assumed (In these examples, father claims children.)

The Variables are as follows:

Alimony

Child Care Costs are \$500.00 when applied

Mom s income is \$1,500.00 when used

Child Care Costs are \$500.00 when used

THE REAL ISSUE: What is the cash available for living costs for each party? Which scenario would you choose for the Husband and which for the Wife?

BASIC WORKSHEET

A. Variables:

Mom — 0 —

no alimony

Child Support: \$968.00/month

Cash available for Mom after expenses: (\$732.00)

Cash available for Dad after expenses: \$1,017.00

B. Variables:

Mom \$1,500 imputed (and she does not work)

No alimony

Child Care Costs: \$500 imputed

Child Support: \$1,270

Cash available for Mom after expenses: (\$430.00)

Cash available for Dad after expenses: \$1,017.00

C. Variables:

Mom — 0 —

Alimony \$1,000.00

Child Support: \$774.00

Cash available for Mom after expenses: \$34.00

Cash available for Dad after expenses: \$863.00

D. Variables:

Mom: \$1,500.00 imputed (and she does not work)

Child Care: \$500.00 imputed

Alimony: \$1,000.00

Child Support: \$939.00

Cash available for Mom after expenses: \$199.00

Cash available for Dad after expenses: \$698.00

E. Variables:

Mom: \$1,500 (she works)

Child Care: \$500.00

Alimony: \$1,000.00

Child Support: \$939

Cash available for Mom after expenses: \$772.00

Cash available for Dad after expenses: \$698.00

F. Variables:

Mom: \$1,500.00 (she works)

Child Care: \$500.00

Alimony: - 0 -

Child Support: \$1,270.00

Cash available for Mom after expenses: \$320.00

Bottom line for Dad after expenses: \$1,1017.00

SHARED PARENTING WORKSHEET

A. Variables:

Mom — 0 —
no alimony

Child Support: \$1,014.00/month
Bottom line for Mom after expenses: (\$686.00)
Bottom line for Dad after expenses: \$1,273.00

B. Variables:

Mom \$1,500 Imputed (and she does not work)
No alimony
Child Care Costs: \$500

Child Support: \$1,193.00
Bottom line for Mom after expenses: (\$507.00)
Bottom line for Dad after expenses: \$1,094.00

C. Variables:

Mom — 0 —
Alimony \$1,000.00

Child Support: \$725.00
Bottom line for Mom after expenses: (\$15.00)
Bottom line for Dad after expenses: \$912.00

D. Variables:

Mom: \$1,500.00 imputed (and she does not work)
Child Care: \$500.00
Alimony: \$1,000.00

Child Support: \$774.00
Bottom line for Mom after expenses: \$34.00
Bottom line for Dad after expenses: \$863.00

E. Variables:

Mom: \$1,500 (she works)
Child Care: \$500.00
Alimony: \$1,000.00

Child Support: \$ 774.00
Bottom line for Mom after expenses: \$607.00

Bottom line for Dad after expenses: \$863.00

F. Variables:

Mom: \$1,500.00 (she works)

Child Care: \$500.00

Alimony: - 0 -

Child Support: \$1,193.00

Bottom line for Mom after expenses: \$243

Bottom line for Dad after expenses: \$1,094

CONCLUSION:

It is surprising to see how the various scenarios impact the Guidelines and how they impact the spendable cash. Doing these analyses helps ensure that she find the best deal for your client, and it indicates that just plugging in the numbers is not how to calculate the Guidelines.